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BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of Federal-State Joint Board
on Universal Service

) CC Docket No. 96-45
)

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COMMENTS OF
AIRTOUCH COMMUNICATIONS, INC.

APR 12 1996

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**COMMENTS OF
AIRTOUCH COMMUNICATIONS, INC.**

AirTouch Communications, Inc. ("AirTouch")¹ hereby submits the following comments regarding the *Notice of Proposed Rulemaking* in the above-captioned proceeding.²

SUMMARY

The Telecommunications Act of 1996 ("1996 Act")³ establishes a new statutory mandate for defining universal service obligations and for developing service support mechanisms. This mandate provides a valuable opportunity for undertaking much-needed reform. The Commission has long recognized the inefficiency of current universal service policies. While current support mechanisms may arguably have been appropriate under the monopoly conditions of the past, today they are not.

In addition to calling for comprehensive rethinking and reform of universal service policies, the 1996 Act takes a number of steps to foster competition in telecommunications markets. A universal service policy that encourages competition and

¹ AirTouch is a wireless communications company with interests in cellular, paging, personal communications services, satellite and other operations.

² *Notice of Proposed Rulemaking and Order Establishing Joint Board*, CC Docket No. 96-45, FCC 96-93 (released March 8, 1996) ("*Notice*").

³ Pub. L. No. 104-104, 110 Stat. 56 (1996).

provides express subsidies to meet clearly defined policy objectives will best serve the public interest and promote the objectives of the 1996 Act. Implementation of such a policy should be the Commission's central objective in this important proceeding. The following general points should guide the Commission and Joint Board's thinking in this area:

- Competition, coupled with targeted governmental intervention, is the best means of promoting universal service.
- Current universal service policy both stifles and is threatened by competition.
- A complete overhaul of the universal service support system is necessary to reduce its cost and increase its efficacy by adopting explicit, targeted programs that rely on market mechanisms where possible.
- The existing support system must be reformed before it is expanded to additional services.

As a necessary precursor to its consideration of universal service issues, the Commission should address certain threshold jurisdictional matters. Competition will be thwarted and the public interest harmed if telecommunications suppliers are subject to inconsistent and overlapping universal service policies at the federal and state levels. In addition, the 1996 Act expressly recognizes separate federal and state jurisdictional responsibilities in the area of universal service. The Commission should confirm in this proceeding that CMRS providers are subject to *federal* universal service support obligations and requirements — and are not subject to the separate state requirements imposed on intrastate service providers.

AirTouch's comments are organized as follows: we first discuss the jurisdictional issues the Commission must address. We then discuss the general points that should guide universal service policy reform.

DISCUSSION

A. The Commission Should Provide Necessary Guidance on the Federal/State Jurisdictional Issues Raised by this Proceeding

AirTouch submits that there is a clear need for a coordinated and comprehensive approach to universal service at the federal and state levels that avoids duplication and inconsistency. In this regard, AirTouch urges the Commission to address in this docket certain critical threshold jurisdictional matters to provide necessary clarification and guidance to all parties.

Under the 1996 Act, carriers that provide "*interstate* telecommunications services" are required to contribute to federal "mechanisms established by the Commission to preserve and advance universal service."⁴ In turn, carriers providing "*intrastate* telecommunications services" are required to contribute to state-"determined" support mechanisms in furtherance of state universal service objectives.⁵ This distinction is critically important to AirTouch and other CMRS providers. Since CMRS is inherently and jurisdictionally an interstate service, it is subject only to *federal* universal

⁴ 47 U.S.C. § 254(d) (emphasis added).

⁵ 47 U.S.C. § 254(f) (emphasis added).

service requirements and funding mechanisms.⁶ This federal treatment of CMRS is fully consistent with Congress' earlier action in the 1993 Budget Act.⁷

In the Budget Act, Congress established a "*Federal regulatory framework governing the offering of all commercial mobile services.*"⁸ Congress sought to promote the "growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."⁹ In furtherance of its objectives, Congress preempted state regulation over CMRS entry and rates,¹⁰ and also specifically exempted CMRS providers from state-imposed universal service obligations, except in those future cases where such

⁶ The 1996 Act provides that states must act in a manner consistent with the Commission's universal service rules and that the state scheme cannot "rely on or burden Federal universal support mechanisms." 47 U.S.C. § 254(f).

⁷ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312 (1993) (which amended, *inter alia*, the Communications Act of 1934). Since passage of the Budget Act, AirTouch has continued to contribute in California to state universal service. AirTouch recognizes an obligation to contribute to funding of a targeted and limited universal service program. This proceeding is the first real opportunity that has been presented to determine whether, for CMRS providers, such funding should be focused at the state or federal level.

⁸ H.R. Rep. No. 213, 103rd Cong., 1st Sess. 490 (1993) ("Conference Report").

⁹ H.R. Rep. No. 111, 103rd Cong. 1st Sess. 260 (1993) ("House Report"). Congress thus recognized the exclusively interstate nature of CMRS.

¹⁰ 47 U.S.C. § 332(c)(3). Congress preempted all continued state entry regulation over CMRS providers. It allowed states to petition to retain rate authority in limited circumstances. Only 8 states sought continued rate authority (one state, Wyoming, withdrew its petition before the Commission acted). All of the state petitions were rejected by the Commission. No other states have sought rate authority.

services “are a substitute for land line telephone exchange service for a substantial portion of the communications within . . . [a] state.”¹¹

Because CMRS is *not* currently a land line service substitute for a substantial portion of the communications in any state, the states are not allowed to impose intrastate universal service requirements on CMRS providers.¹² The fact that such requirements are being imposed by the states would, if not corrected, result in a double universal service burden on CMRS providers. AirTouch urges the Commission to address this important jurisdictional issue in the instant rulemaking and to provide the Joint Federal-State Board guidance in this area.

B. Competition, Coupled with Targeted Governmental Intervention, is the Best Means of Promoting Universal Service

The fundamental goal of universal service policy is to ensure that all Americans have access to telecommunications services at affordable rates. The best way to achieve this goal is to follow a policy that (1) promotes widespread telecommunications competition, and (2) implements targeted government programs in areas where there is a demonstrated market failure.

Promote widespread telecommunications competition. A fully competitive environment will make telecommunications services available to the largest numbers of Americans at the lowest rates. Competition will do the most to lower prices

¹¹ 47 U.S.C. § 332(c)(3).

¹² 47 U.S.C. § 253(e) of the 1996 Act also expressly preserves the preemption provisions contained in Section 332(c)(3) of the Budget Act. (“Nothing in this section shall affect the application of 332(c)(3) for commercial mobile providers.”).

and costs while raising quality and levels of innovation. The Commission has acknowledged that:

competition in the local telecommunications market has enormous potential to foster the goals of universal service. Competition creates incentives for companies to enter local markets with cost effective and technologically advanced systems. This results in consumers paying less for local service, at the same time spurring demand for new state-of-the-art telecommunications systems. In this manner, both subscribership and the scope of services increase.¹³

Competition promotes cost-based pricing of telecommunications services and, as the Commission has recognized, thus enhances the efficient use of the public switched network.

Implement targeted and limited government programs in areas where there is a demonstrated market failure. AirTouch recognizes that reliance on competition alone may not be sufficient to ensure the attainment of universal service objectives. However, we are only just commencing the era of local competition — an era which may go far towards ensuring the widest possible dissemination of telecommunications services. In those cases where the operation of the free market fails to attain policy goals, there is a role for limited and properly designed government intervention.

Because it must raise subsidy funds from somewhere, even the best-designed support program will trigger efficiency losses by distorting consumption and

¹³ *Preparation for Addressing Universal Service Issues: A Review of Current Support Mechanisms* (Common Carrier Bureau) at 3 (1996) (“*Current Support Mechanisms*”).

investment decisions. Thus, policy makers should seek other means of promoting universal service where possible (*e.g.*, disallowing disconnect for non-payment of toll).

Further, in light of the social costs of raising such funds, subsidy programs should be limited to targeted populations and services where market failures are clearly demonstrated. Without limitations, the expense of the universal service program will negatively impact the deployment of competitive services.

Of additional concern is the fact that current subsidies are *not* targeted to the groups they are intended to aid. Local services are generally subsidized across the board, resulting in an enormous resource transfer paid for by more competitive services including long distance, business customers and leased lines. As a consequence, current policies are unnecessarily costly and ineffective. In contrast, by focusing assistance specifically where it is needed, well-designed and targeted assistance will reduce the cost of universal service programs *and* increase their effectiveness in serving groups that are in greatest need of help.

Competition will complement and strengthen well-designed universal service policies. Competition lowers the costs of attaining universal service objectives in two ways: First, it reduces the need for governmental intervention to promote universal service; and second, in those instances where governmental intervention still is necessary, competition tends to lower the costs of the programs that are established. It does this through at least two mechanisms: by promoting innovation which encourages a reduction in the underlying costs of the services and thus a reduction in subsidy needs, and by making universal service programs work more efficiently. Competition for the

receipt of universal service funds allows the selection of the least-cost provider and leads providers to lower their subsidy demands for the provision of a given level of service.¹⁴

C. Current Universal Service Policy both Stifles and is Threatened by Competition

Current universal service policy and widespread, efficient competition are incompatible. Current policies limit and distort competition, and the prospect of competition, in turn, threatens many of the current universal service support mechanisms.

The conflicts between competition and current universal service policy arise in large part because current policy relies heavily on the use of implicit cross-subsidies, many of which are not the result of rational policy determinations. Such subsidies create market distortions that both affect the provision of competitive services and distort usage and infrastructure investment decisions.

The Commission has previously acknowledged that “competitive entry into local service markets may make it impossible for certain types of support to continue without disadvantaging one or more competitors in a given market.”¹⁵ AirTouch agrees with the Commission’s assessment and submits that existing universal service fund mechanisms are neither competition- nor technology-neutral, since the majority are provided to incumbent LECs in the form of explicit and implicit subsidies. The current system thus discriminates against new carriers and generally works to impede competitive entry.

¹⁴ Support mechanisms are discussed further in Section D below.

¹⁵ *Current Support Mechanisms* at 3.

It is counterproductive to distort competition through the use of implicit subsidies that are collected from potential competitors for the subsidized services. Entry is encouraged for those services that are priced above cost, thus undermining the sources of subsidy. And raising local exchange service subsidies from a potential competitor, such as a CMRS provider, is self-defeating. The resulting handicap may deter the entry of a potential rival even when that firm has lower costs than the incumbent LEC.

Such a policy is particularly unfair and inefficient given that only LECs are currently eligible for the subsidies. The 1996 Act is right to seek broad-based contributions to universal service support, including federal contributions from CMRS providers, but this must be done in a way that promotes technological and competitive neutrality, rather than harming it.¹⁶

Just as current subsidy flows distort and stifle competition, the emergence of competition threatens current subsidy flows. As the Commission has noted, current policies “were the result of pricing and cost-allocation practices that arose in a prior monopoly service environment, and may not be sustainable in a competitive market.”¹⁷ It is widely acknowledged that implicit cross subsidies are not viable in a competitive market. Entry will be encouraged for those services that are priced above cost, thus undermining the sources of subsidy.

¹⁶ For example, a surcharge based on gross revenues (which thus fails to take costs into account in assessing ability to pay) is neither competitively nor technologically neutral.

¹⁷ *Current Support Mechanisms* at 3.

D. A Complete Overhaul of the Universal Service System is Necessary to Reduce its Cost and Increase its Fairness and Efficacy

Universal service policy is in need of comprehensive reform. The current system distorts competition and prevents the realization of the benefits that competition could bring, both in the promotion of universal service and the attainment of efficiency goals more generally. Other pricing distortions inherent in the current system of cross-subsidies also lead to efficiency losses and, more importantly, to the system's failure in serving those who need it most. Therefore, the public interest would best be served by reforming the current universal service support system before expanding it to cover additional services.

As the Commission reforms universal service, it should adhere to the following core principles:

- *Universal service support mechanisms should be technologically and competitively neutral.* As discussed above, only policies that result in substantive neutrality will allow for the attainment of universal service goals while promoting, rather than stifling, the industry-wide competition which is now beginning to take hold.

- *Support mechanisms should be well-defined and explicit.* The current system of implicit subsidies undermines competition and the public benefits it can bring. Moreover, the current system lacks the critical attributes of accountability and fairness. The magnitudes of many of the subsidy flows within the existing system are unclear — even to the Commission. Rational policy making is impossible under such conditions. For example, in the LEC-CMRS interconnection proceeding, LECs claim that they need inflated interconnection charges to subsidize universal service. However,

the current system provides no means of verifying the LECs' claims and wireless local loop competition would be threatened if the Commission were to take the claims at face value by allowing excessive interconnection charges to continue.

In implementing new universal service rules, the Commission must ensure that there are "specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service."¹⁸ Moreover, "any support mechanism continued or created . . . should be explicit, rather than implicit as many support mechanisms are today."¹⁹ Finally, the funding obligation for universal service support must be assessed on an "equitable and nondiscriminatory basis."²⁰

There are several dimensions to making support policies open and explicit mechanisms for the promotion of efficiency, accountability, and fairness. Subsidy payments should not be levied by one carrier upon another, such as those included in interconnection charges today. A neutral body with no ability or incentive to thwart competitive entry should administer the fund. Universal service policies must be spelled out to telecommunications providers, and end-users also should be fully informed. (For example, carriers required to make contributions toward universal service should be allowed to pass through and label these contributions clearly on their customers' bills.)

- *Support programs should be targeted to help those in need of assistance.* Universal service programs should be limited to targeted populations and to

¹⁸ 47 U.S.C. § 254(b)(5).

¹⁹ 1996 Act, Joint Explanatory Statement of the Committee of Conference at 131. See 47 U.S.C. § 254(e).

²⁰ 47 U.S.C. § 254(d).

situations where documented market failures require government intervention. AirTouch believes such targeting is fully in keeping with Congress' intent to reach the populations identified in the 1996 Act. This approach will reduce the cost, and increase the effectiveness, of universal service policies.

If direct subsidy payments to consumers are not employed, the Commission must ensure that support provided to carriers is not used to subsidize competitive services. Thus, as required by 47 U.S.C. § 254(k), the Commission must “establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that [interstate] services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.”²¹

- *Market forces should be relied on to the greatest extent possible, both in the promotion of universal service generally and in the administration of explicit universal service support programs.* The current system makes far too little use of economic incentives. There are several sources of social benefit from increased reliance on market forces. First, competition encourages cost-reducing innovation. Under the current system, there is relatively little incentive for a universal service provider to lower its costs. It is well recognized that basing subsidy payments on actual or reported costs dampens the incentive to reduce those costs.

Second, the use of market mechanisms (*e.g.*, competitive bidding) to administer universal service programs will lead to competition in the provision of

²¹ 47 U.S.C. § 254(k). AirTouch understands that the Commission intends to commence a separate rulemaking in the near term to implement Section 254(k) requirements. *See Notice* at ¶ 12 n.32.

universal service and thus will reduce the cost of the programs. Competition to obtain subsidy funds will induce providers to lower their subsidy demands for providing a given level of service. (In contrast, the current system allows LECs to make inflated claims about the need for universal support.) Using market forces to allocate subsidy funds will also allow selection of the least-cost providers.

There is yet another way in which universal service policy should rely on market forces. Support mechanisms should make use of economic incentives (*e.g.*, explicit subsidy payments), rather than regulatory fiat (*e.g.*, orders to carriers to provide service) to reach the outcomes desired. The use of financial incentives ensures that policy makers are aware of the costs of any particular initiative, while providing a safety valve against particularly inefficient policies. When carriers are simply ordered to provide service, little information about the cost of universal service programs is generated and high-cost, low-benefit programs may be expected to continue.

E. The Universal Service Support System Must Be Reformed Before it is Expanded to Additional Services

The public interest would best be served by reforming the current universal service support system before expanding it to new services. While the need to raise funds through any subsidy program will result in some economic distortions, the current system is unduly costly. Expansion of the current system thus would trigger even larger efficiency losses. Moreover, the extension of current policies would work to hinder, rather than promote, the attainment of universal service objectives.

There are several ways in which this hindrance would occur. The first results from the inevitable limits on the size of universal service expenditures. Given the

scarcity of resources, wasteful programs reduce what ultimately can be achieved. The distortions entailed by the current system may also work to undermine it. For example, it is well documented that the current practice of raising interstate, interexchange calling charges has the effect of suppressing long-distance calling *and* discouraging some people from obtaining basic telephone service. Moreover, if subsidies are expanded prior to reforming the subsidy mechanisms, the anticompetitive effects of the current system will only be exaggerated. This will serve to further entrench incumbent service providers which, in turn, will impede competition and stifle investment. By discouraging competition and investment, the extension of current policies will thwart the realization of the important benefits that competition can bring as a promoter of universal service.

Rather than expanding the current system, the public interest would better be served by reforming universal service support mechanisms and then taking a long, hard look at where governmental intervention is needed. We do not yet know where there will be market failures in the provision of universal service because the free market has not yet been given a chance to operate. Instead, we have artificially protected local exchange monopolies. For both new and existing services alike, competition should be given a fair and full opportunity to promote universal service.

In summary, the current universal service structure is not ready to support expansion to include interexchange service,²² Internet service, and mobile services.²³

²² It would be ironic, to say the least, to subsidize interexchange service given that current universal service policies have the effect of *suppressing* interexchange usage.

²³ This recommendation does not violate technological neutrality, because it would allow the use of wireless technologies to compete in the provision of local

(continued...)

Ultimately, such expansion may prove to be unnecessary to meet the true needs of consumers.

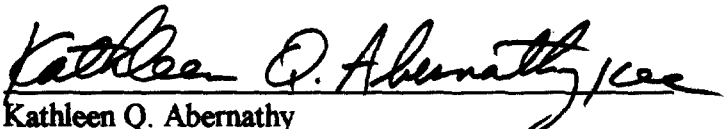
CONCLUSION

Economic principles, the 1996 Act, and common sense all point in the same direction: The Commission and the Joint Board should undertake a comprehensive overhaul of the universal service system to reduce its cost and increase its effectiveness by adopting explicit, targeted programs that rely on market mechanisms wherever possible. Universal service policies that foster competition and provide subsidies that directly benefit affected consumers will serve the public interest and meet the requirements imposed by the 1996 Act. The necessary reforms must be coordinated at the federal and state levels, and they should be undertaken before expanding the universal service support system to additional services. Jurisdictional issues related to universal service obligations at the federal and state levels must also be addressed early in the process.

The resulting policy reforms will facilitate competition, allow consumer choice among competing service providers, and advance the aims of universal service.

Respectfully submitted,

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A handwritten signature in cursive script, reading "Jo-Ann Grayton", written over a horizontal line.

***By Hand**